

# Mental Health Care in America: Addressing the Mental Health Crisis in Public Schools

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## I. Introduction

Mental illness often manifests for the first time during adolescence.<sup>1</sup> This not only leads to disruptions in education, familial relations, and social development, but it also frequently results in violence against others or, far more often, suicide.<sup>2</sup> Though it affects all demographics differently, suicide is the third leading cause of death in adolescents aged 10-14 and the second leading cause of death for adolescents aged 15-19.<sup>3</sup> Between 500,000-1 million young people aged 15-24 attempt suicide each year.<sup>4</sup> Overall, 17.6% of all deaths in the US of individuals aged 10-24 were a result of suicide.<sup>5</sup> These numbers display a harsh and often disregarded reality that under the current state of the mental health care system in the US, young people are killing themselves every year at an alarming rate.

The field of mental health care has made significant developments and improvements in the care provided to individuals struggling with mental illness and other psychological conditions. Overall, access to mental health care has broadened and the treatments that are available today are more effective than ever before.<sup>6</sup> However, for many vulnerable sectors of the American population, quality mental health care is often inaccessible due to both the unequal distribution of

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<sup>1</sup> Tomás Paus, et al., *Why Do Many Psychiatric Disorders Emerge During Adolescence?*, 9(12) NATURE REVIEWS. NEUROSCIENCE. 947-57 (2008).

<sup>2</sup> *How Mental Health Disorders Affect Youth*, YOUTH.GOV – MENTAL HEALTH, <https://youth.gov/youth-topics/youth-mental-health/how-mental-health-disorders-affect-youth>.

<sup>3</sup> Melonie Heron, Ph.D., *Deaths: Leading Causes for 2015*, *National Vital Statistics Reports*, 66(5) NAT'L CENTER FOR HEALTH STATISTICS, 2017, [https://www.cdc.gov/nchs/data/nvsr/nvsr66/nvsr66\\_05.pdf](https://www.cdc.gov/nchs/data/nvsr/nvsr66/nvsr66_05.pdf).

<sup>4</sup> *Children's Mental Health Statistics*, MENTAL HEALTH AMERICA, [www1.nmha.org/children/prevent/stats.cfm](http://www1.nmha.org/children/prevent/stats.cfm) (accessed March 31, 2009).

<sup>5</sup> *Id.*

<sup>6</sup> *Mental Health Treatment and Services*, NAT'L ALLIANCE ON MENTAL ILLNESS (NAMI), <https://www.nami.org/Learn-More/Treatment>.

mental health professionals across the country as well as the financial cost of securing treatment.<sup>7</sup> One of the most vulnerable populations in terms of mental health care are children and adolescents.<sup>8</sup>

Ensuring that children and adolescents have adequate access to mental health treatment options is an essential part of public health. The rates of mental illness in this age group are higher than ever, due in part to increased screening for such conditions, but also to an increased ability to diagnose these illnesses and disorders.<sup>9</sup> Despite that, the vast majority of adolescents and children with psychiatric conditions do not receive treatment.<sup>10</sup> Recognizing that reality, it is also important to understand that if left unaddressed and untreated, mental health conditions often get worse as the individual becomes an adult and are shown to lead to a wide range of interpersonal, familial, and societal ills such as drug addiction, alcoholism, criminality, violence, and suicide.<sup>11</sup> In other words, mentally unwell young people who do not receive treatment or intervention are less likely to be mentally healthy adults.

States are becoming more cognizant of the public's need for mental health education. New York and Virginia have become the first states to enact comprehensive legislation to address the growing need for children and young adults to be educated about mental health starting at a young age. Several other states, including New Jersey and South Carolina, have proposed similar legislation to promote a multidimensional approach to health education to include comprehensive

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<sup>7</sup> Emmanuel M. Ngui, et al., *Mental Disorders, Health Inequalities and Ethics: A Global Perspective*, 22(3) INT. REV. PSYCHOLOGY 235-44 (2011).

<sup>8</sup> P.C. Shastri, *Promotion and Prevention in Child Mental Health*, 51(2) INDIAN J PSYCHIATRY 88-95 (2009),

<sup>9</sup> Mark Olfson, M.D., M.P.H., et al., *Trends in Mental Health Care Among Children and Adolescents*, 372 N. ENGL. J. MED. 2029-2038 (2015).

<sup>10</sup> Sheryl H. Kataoka, M.D., et al., *Unmet Need for Mental Health Care Among U.S. Children: variation by ethnicity and insurance status*, 159(9) AM. J. PSYCHIATRY 1548-1555 (2002).

<sup>11</sup> Joel L. Young, *Untreated Mental Illness, Understanding the Effects*, PSYCHOLOGY TODAY (2015), <https://www.psychologytoday.com/us/blog/when-your-adult-child-breaks-your-heart/201512/untreated-mental-illness>.

mental health curriculum and suicide prevention education.<sup>12</sup> Proactive legislation that directly provides students with adequate tools to deal with and understand mental health, such as these laws, has the potential to be one of the most important ways to increase mental wellbeing and public health overall. These laws not only have the potential to improve student mental health in the short term but may also lead to improvements in the long term as these students leave school and become adults.

## II. Virginia and New York Bills on Mental Health Education in Public Schools

Over the past decade, state legislatures have begun to focus their attention on student mental health in public schools. Each state has a different approach to dealing with this issue but some have made it a greater priority than others. The two most recent states to pass comprehensive mental health measures in their public schools are New York and Virginia.

### A. The New York Bill—An Act to Amend the Education Law, in Relation to Clarifying Health Education

The New York bill,<sup>13</sup> titled “An Act to amend the education law, in relation to clarifying health education,” which took effect in July of 2018, is a comprehensive bill that seeks to expand mental health education in public schools to “ensure that [school districts] health education programs recognize the multiple dimensions of health by including mental health and the relation between mental and physical health in health education.”<sup>14</sup> This Act clarifies that the already required health education classes must cover mental health in depth alongside physical health, as well as how it relates. The New York State Legislature included in the Act a detailed justification

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<sup>12</sup> N.J. S-2861, 218<sup>th</sup> Leg., (N.J. 2018), *see also* SC H3258, 123<sup>rd</sup> Leg., (S.C. 2019).

<sup>13</sup> Amends §804, New York State Education Law (as proposed in S.6046-A & A.3887-B, 2016 Chapter 390). Provides That health education in schools must include instruction in mental health. The statutory amendments further provide that such P-12 instruction shall be designed to enhance student understanding, attitudes and behaviors that promote health, well-being and human dignity. (N.Y. 2018).

<sup>14</sup> *Id.*

for its legislation.<sup>15</sup> It succinctly and clearly lays out the position of the State of New York in regard to mental health in public schools. An excerpt from the justification reads:

[B]y ensuring that young people learn about mental health, we increase the likelihood that they will be able to more effectively recognize signs in themselves and others, including family members, and get the right help. Further, as we begin to teach the facts about mental health and openly discuss the issues from a health perspective, we will begin to remove the stigma surrounding mental illness - a stigma that causes ostracism and isolation, leads to bullying and keeps many students from getting the help they need.<sup>16</sup>

By mandating the inclusion of mental health education in the health education curriculum, students from a young age will grow up being educated on the “multiple dimensions of mental health.” Not only does this have the potential to make more well-rounded young people, but it allows them to gain a comfort level with discussing the topic of mental health. This would not only allow students to self-identify any mental health condition they may be experiencing, but it would also make them better equipped to seek help and access treatment.

B. The Virginia Bill—An Act to Amend and Reenact § 22.1-207 of the Code of Virginia, Relating to Health Instruction; Mental Health

The Virginia bill<sup>17</sup> sought to achieve the same goal as the New York law. However, it does it in a less encompassing way. The language of the bill states that:

Physical and health education shall be emphasized throughout the public school curriculum by lessons, drills and physical exercises, and all pupils in the public elementary, middle, and high schools shall receive as part of the educational program such health instruction and physical training as shall be prescribed by the Board of Education and approved by the State Board of Health. *Such health instruction shall incorporate standards that recognize the multiple dimensions of health by including mental health and the relationship of physical and mental health so as to enhance student understanding, attitudes, and behavior that promote health, well-being, and human dignity.*<sup>18</sup>

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<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> VA. CODE ANN. § 22.1-207 (2018).

<sup>18</sup> *Id.*

Additionally, the Act uses the same language as the New York bill, instructing schools to focus on the “multiple dimensions of health.” Finally, the Virginia legislation requires all Virginia Boards of Education to review and update their health curriculum for ninth and tenth grades while consulting with mental health experts from various agencies and organizations. The Virginia Act also took effect in July of 2018.<sup>19</sup>

### III. Federal Laws Addressing Mental Health in Public Schools

There are currently three powerful pieces of legislation that serve to protect the rights of individuals with mental illness in public schools: the Individuals with Disabilities Education Improvement Act of 2004 (IDEA)<sup>20</sup>, Section 504 of the Rehabilitation Act of 1973<sup>21</sup>, and the Americans with Disabilities Act (ADA)<sup>22</sup> which overlaps with Section 504 and IDEA as well as other anti-discrimination statutes. These laws act to identify students with disabilities and ensure that they receive reasonable accommodations to enable them to receive an appropriate public education.

#### A. Individuals with Disabilities Education Act of 2004 (IDEA)

The Individuals with Disabilities Education Act (IDEA)<sup>23</sup> was originally passed in 1975, at the time known as the Education of Handicapped Children Act. It was subsequently renamed to its current title when it was amended in 1990. Further amendments were passed in 1997 and 2004 to improve equal access to education in public schools. The goal of this Act since its

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<sup>19</sup> *Id.*

<sup>20</sup> Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 et seq. (2012).

<sup>21</sup> Rehabilitation Act of 1973, 29 U.S.C. §§ 701–753 (1973).

<sup>22</sup> Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 et seq. (1990).

<sup>23</sup> 20 U.S.C. §§ 1400 et seq. (2012).

inception was to ensure equal access to a free, appropriate public education (FAPE) for students with disabilities, comparable to the education received by non-disabled students.<sup>24</sup>

In passing the statute, Congress stated several purposes for the legislation:

(1)(A) to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living<sup>25</sup>;

(B) to ensure that the rights of children with disabilities and parents of such children are protected; and

(C) to assist States, localities, educational service agencies, and Federal agencies to provide for the education of all children with disabilities;

(2) to assist States in the implementation of a statewide, comprehensive, coordinated, multidisciplinary, interagency system of early intervention services for infants and toddlers with disabilities and their families;

(3) to ensure that educators and parents have the necessary tools to improve educational results for children with disabilities by supporting system improvement activities; coordinated research and personnel preparation; coordinated technical assistance, dissemination, and support; and technology development and media services; and

(4) to assess, and ensure the effectiveness of, efforts to educate children with disabilities.<sup>26</sup>

IDEA is broken into four parts.<sup>27</sup> Part A defines the terms used in the Act<sup>28</sup> and creates the Office of Special Education Programs<sup>29</sup> which carries out the administration of the Act. Part B provides the educational guidelines for students aged 3-21.<sup>30</sup> Part B also provides financial assistance to qualifying schools to aid them in carrying out the Act.<sup>31</sup> State eligibility is determined under 20 U.S.C. § 1412. In order to qualify for financial assistance, the state must provide a plan to Secretary of the U.S. Department of Education

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<sup>24</sup> 20 U.S.C. § 1400(d)(1)(A).

<sup>25</sup> *Id.*

<sup>26</sup> 20 U.S.C. § 1400(d)(1-4).

<sup>27</sup> *Individuals with Disabilities Education Act (IDEA)*, U.S. DEPT. OF EDUCATION, <https://sites.ed.gov/idea/statuteregulations/>.

<sup>28</sup> 20 U.S.C. § 1401(1)-(36).

<sup>29</sup> 20 U.S.C. § 1402.

<sup>30</sup> 20 U.S.C. §§ 1411-1419.

<sup>31</sup> *Id.*

demonstrating how the state plans to meet the requirements of the statute through the implementation of policies and procedures.<sup>32</sup> In order to receive funding a state must ensure fulfillment of a number of requirements including: the state has a “child find” responsibility to identify, locate, and evaluate every child with a disability in the state who is eligible for special education services,<sup>33</sup> every child with disability determined eligible is entitled to a free and appropriate public education,<sup>34</sup> each child with a disability has an individualized education program (“IEP”) developed,<sup>35</sup> that the state has an obligation to place children with disabilities in the “least restrictive environment”,<sup>36</sup> evaluations occur as required under 20 U.S.C. § 1414(a)-(c),<sup>37</sup> and that parents and children with disabilities are afforded procedural safeguards under 20 U.S.C. § 1415.<sup>38</sup>

Part C of IDEA focuses on disabled babies and toddlers.<sup>39</sup> Part D deals with grants and funding offered to facilitate beneficial programs, projects, and support systems for disabled youth.<sup>40</sup> The most essential part of the Act is the requirement that schools create an Individualized Education Plan (IEP) which lays out specific actions and steps that would allow educational providers, parents, and the student to reach the stated educational goals of the child.<sup>41</sup> If a parent feels that an Individualized Education Plan (IEP) is inappropriate for their child, or that their child

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<sup>32</sup> 20 U.S.C. § 1412(a).

<sup>33</sup> 20 U.S.C. § 1412(a)(3)(A)-(B).

<sup>34</sup> 20 U.S.C. § 1412(a)(1)(A).

<sup>35</sup> 20 U.S.C. § 1412(a)(4).

<sup>36</sup> 20 U.S.C. § 1412(a)(5)(A)-(B).

<sup>37</sup> 20 U.S.C. § 1412(a)(7).

<sup>38</sup> 20 U.S.C. § 1412(a)(6).

<sup>39</sup> 20 U.S.C. § 1431-1444.

<sup>40</sup> 20 U.S.C. § 1450-1482.

<sup>41</sup> 20 U.S.C. § 1414(d).

is not receiving the services they need, they have the right under the Act to due process and to challenge their child's treatment.<sup>42</sup>

## B. Section 504 of the Rehabilitation Act of 1973

Section 504<sup>43</sup> states that “no otherwise qualified individual with a disability in the United States, as defined in section 7(20) [29 USCS § 705(20)], shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service.”<sup>44</sup> “Program or activity” under the Act includes “a local education agency”.<sup>45</sup>

According to resources from the federal government, “each Federal agency has its own set of section 504 regulations that apply to its own programs.”<sup>46</sup> Further, “[a]gencies that provide Federal financial assistance also have section 504 regulations covering entities that receive Federal aid.”<sup>47</sup> Additionally, it is possible to enforce Section 504 through private lawsuits and it is not necessary to file a complaint with a Federal agency or receive a “right-to-sue” letter before going to court.<sup>48</sup> Effectively, Section 504 is an anti-discrimination statute that provides both requirements on what federally funded entities, such as public schools, must provide those with disabilities and legal remedies should there be a violation.

## C. The Americans with Disabilities Act (ADA)

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<sup>42</sup> 20 U.S.C. § 1415.

<sup>43</sup> Section 504 of the Rehabilitation Act of 1973, as amended  
29 U.S.C. § 794.

<sup>44</sup> 29 U.S.C. § 794(a).

<sup>45</sup> 29 U.S.C. § 794(b)(2)(B).

<sup>46</sup> *A Guide to Disability Rights Law*, U.S. DEPART. OF JUSTICE, <https://www.ada.gov/cguide.htm>, (last updated March 2017).

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*



The ADA covers disability discrimination in schools, both private and public.<sup>49</sup> At its core, the main right the ADA confers is the right for individuals with disabilities to be free from discrimination<sup>50</sup>, though it does not provide much guidance on how the schools must accomplish that. Instead, the ADA acts as a broad civil rights statute that prohibits a wide range of discrimination in almost any setting, private or public. Despite the absence of specific guidelines, the ADA most certainly covers students with disabilities in public schools.<sup>51</sup>

The ADA defines an individual with a disability as someone who (1) has a physical or mental impairment that substantially limits one or more major life activities of the individual; (2) has a record of such an impairment; or (3) is regarded as having such an impairment.<sup>52</sup> In 2008, Congress passed the ADA Amendments Act (ADAAA) which reaffirmed the Act's goal of protecting those with disabilities from discrimination.<sup>53</sup> This amendment was a result of several Supreme Court Decisions that "narrowed the broad scope of protection intended to be afforded by the ADA, thus eliminating protection for many individuals whom Congress intended to protect."<sup>54</sup>

Despite addressing different aspects of protecting those with disabilities, the ADA overlaps heavily with both IDEA and Section 504.<sup>55</sup> In the majority of cases, someone who qualifies for inclusion under IDEA is likewise covered under both the ADA and Section 504. The section of the ADA that covers Public Schools is Title II<sup>56</sup> of the act, which applies to "public entities." Public Entities are defined by the act as: "(A) any State or Local Government; (B) any department,

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<sup>49</sup> 42 U.S.C. §§ 12131-12134.

<sup>50</sup> 42 U.S.C. § 12101(b)(1)-(4).

<sup>51</sup> Deborah Leuchovius, *ADA Q&A: Back to School*, <https://www.pacer.org/publications/adaqa/school.asp>.

<sup>52</sup> 42 U.S.C. § 12102(1)(A)-(C).

<sup>53</sup> ADA Amendments Act of 2008, 110 P.L. 325, 122 Stat. 3553.

<sup>54</sup> *Id.* at 3554.

<sup>55</sup> *A Comparison of ADA, IDEA, and Section 504*, DISABILITY RIGHTS AND EDUCATION DEFENSE FUND (DREDF), <https://dredf.org/legal-advocacy/laws/a-comparison-of-ada-idea-and-section-504/>.

<sup>56</sup> *Information and Technical Assistance on the Americans with Disabilities Act*, U.S. DEPT. OF JUSTICE, CIVIL RIGHTS DIVISION, [https://www.ada.gov/ada\\_title\\_II.htm](https://www.ada.gov/ada_title_II.htm).

agency, special purpose district, or other instrumentality of a State or States or local government; and (C) the National Railroad Passenger Corporation, and any commuter authority...” There are two provisions of Title II. These state that public entities must provide (1) program access (2) in an integrated setting unless separate programs are necessary to ensure equal benefits or services.<sup>57</sup>

#### IV. Analysis: Federal Laws vs. State Laws

Unlike the existing federal laws protecting those with mental illness, the Virginia bill, much like the New York bill, seeks to address mental illness in young people directly through educating students on how mental health ties into overall wellbeing. Rather than the sole focus being to guarantee these students the right to an education in public schools like those without mental illness, these bills attempt to address the root of the issue in a different way and deal specifically with proper and comprehensive mental health education.

While the ADA, IDEA, and Section 504 provide valuable remedies for disability discrimination and set standards for what services must be offered to the disabled and what processes must be followed, the New York bill and the Virginia bill seek to improve student mental health via a different route, through educational reforms and increased access to information on psychiatric conditions. These differences signal a shift from the mindset of finding ways to keep students in school, to the mindset of dealing with the reason that the disabled or mentally ill student is having trouble staying in school, while going even further by aiming to reduce youth suicides

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<sup>57</sup> There is currently legislation being considered to reform aspects of the ADA. In 2018, the House of Representatives passed the ADA Education and Reform Act of 2017 which is now in the Senate for approval. This reform has been heavily criticized as it relaxes some of the restrictions on property owners and provisions changing the legal remedies available may cause harm to individuals with disabilities. <https://www.congress.gov/bill/115th-congress/house-bill/620/text>; See also, *Myths and Truths about the “ADA Education and Reform Act” (H.R. 620)*, AMERICAN CIVIL LIBERTIES UNION, <https://www.aclu.org/other/hr-620-myths-and-truths-about-ada-education-and-reform-act>.

and other social ills. Existing federal laws such as the ADA, IDEA, and Section 504 have been instrumental at bridging the gap for students who are dealing with acute disability in addition to being a student. Such laws have served to provide students personalized treatment and programming in a school setting with their peers in a way that protects their rights and provides them with individualized support, but these novel state laws such as the New York and Virginia legislation seek to address the issue in a broader way – by mandating that every student, not just those with a diagnosed disability, be educated on mental health.

The language used in the New York and Virginia bills, specifically the concept of “multiple dimensions of health,” demonstrates a novel way of looking at mental health and mental health education in general. While the laws focusing on addressing child and adolescent mental illness are important, this clear indication of a new mindset surrounding mental health care is equally important, if not more so. By focusing on educating young people on mental health in a more holistic way, rather than as some sort of taboo or negative construct in the way that it has historically been, it not only increases their ability to seek meaningful treatment, it increases the likelihood that school districts and the government will focus their energies on improving circumstances for vulnerable young people.

By educating children and adolescents on mental health from a young age, society may serve to normalize mental disorders and illness in a way that will substantially diminish the stigma surrounding such conditions. By mandating that students in K-12 receive such education, educators and health professionals can help ensure that there are minimal discrepancies in the education they receive. As this legislation ages, so too do the students who started this updated curriculum in the fall of 2018, allowing them to grow up with a sound understanding of the

importance of mental health as well as the ability to discuss it more openly and in a more informed way.

It is the position of this paper that in the future, mental health legislation for public schools should focus on reducing the prevalence of mental illness and its consequences by educating the public on mental health, rather than focusing on getting students through school and into the workforce despite their disabled status. By viewing mental illness as a common but devastating public health issue that needs to be addressed, rather than a social issue that carries stigma and blame, the legislature can start to improve, and even save, lives.

## V. Conclusion

There are steps both the state and federal legislatures can take in order to reduce the detrimental effects of mental illness in young people. This has been attempted in a variety of ways, but until recently legislation did not attempt to address the root causes of the issue as we see it today: lack of education on mental illness and mental health in general, and lack of access to quality and affordable mental health treatment. Both of these areas can be addressed directly in a public school setting and would have profound effects on society as the young people covered by these new laws grow into adults.

The effects of these laws being passed are not immediate. The Virginia and New York Bills are poised to have lasting effects on young people which could lead to drastic improvement in a number of aspects of society. The sooner other states and the federal government begin proposing and enacting legislation that focuses on reducing the harmful effects of mental illness

in young people, the sooner America can see what results, if any, there are. Overall, mental health care in the United States can be improved in both the short term and the long term through legislation requiring mental health education as well as placing a greater focus on mental health in public schools.